



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2003

Ms. Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
333 Guadalupe Street, Box 21
Austin, Texas 78701-3942

OR2003-6874

Dear Ms. Dodson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188524.

The Texas State Board of Pharmacy (the "board") received a request for the "Board Orders" concerning five named individuals. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note, and you acknowledge, that the department has not sought an open records decision from this office within the ten business day time period prescribed by section 552.301 of the Government Code. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under section 552.101.

We also note that the present request was made by a representative of the Texas Health and Human Services Commission (the "commission"). This office has determined that information may generally be transferred between governmental bodies that are subject to the Public Information Act without waiving exceptions to the disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); *see also* Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). Although information may generally be transferred between governmental bodies without violating its confidential character, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (when governmental body not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its transfer).

You claim that the submitted information must be withheld pursuant to section 552.101 of the Government Code. This section excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. Section 564.001 of the Occupations Code provides that a "person, including a pharmaceutical peer review committee, who has knowledge relating to an action or omission of a pharmacist in this state or a pharmacy student . . . that might provide grounds for disciplinary action under Section 565.001(a)(4) or (7) may report relevant facts to the board" and that a "committee of a professional society composed primarily of pharmacists, the staff of the committee, or a district or local intervenor participating in a program established to aid pharmacists . . . impaired by chemical abuse or mental or physical illness may report in writing to the board the name of an impaired pharmacist . . . and the relevant information relating to the impairment." Occ. Code § 564.001(b). Section 564.002 provides that "[t]he records and proceedings of the board . . . in connection with a report under Section 564.001(a) or (b), are confidential and are not considered public information for purposes of Chapter 552, Government Code." *Id.* § 564.002. Section 564.003 provides that:

(a) The board may disclose information confidential under Section 564.002 only:

- (1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;
- (2) to a pharmacist licensing or disciplinary authority of another jurisdiction;
- (3) under a court order; or
- (4) as provided by Subsection (b).

(b) The board may disclose that the license of a pharmacist who is the subject of an order of the board that is confidential under Section 564.002 is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board's action.

Id. § 564.003.

Based on your arguments and our review of the submitted information, we agree that the documents submitted as Attachments C, D, E, F, and G constitute disciplinary orders of the board that were issued in connection with a report made in accordance with section 564.001 of the Occupations Code. Therefore, we conclude section 564.002 makes these documents confidential. The commission does not fall within any category of persons or entities that are authorized to receive this confidential information under section 564.003(a). *See* Occ. Code § 564.003(a). Accordingly, the board must withhold Attachments C, D, E, F, and G in their entirety under section 552.101 of the Government Code in conjunction with section 564.002 of the Occupations Code. *See* Open Records Decision No. 614 (concluding that predecessor statute made terms of "impaired" orders confidential). We note, however, that section 564.003(b) allows the board to disclose that the licenses of these pharmacists are either suspended, revoked, canceled, restricted, or retired or that the pharmacists are in any other manner limited in the practice of pharmacy. *See* Occ. Code § 564.003(b).

Although you request a previous determination regarding this type of information, we decline to issue one at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

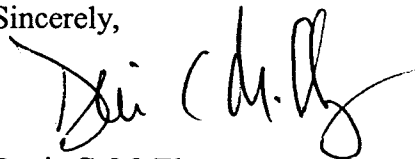
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Den C. McElroy", written over a horizontal line.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 188524

Enc. Submitted documents

c: Ms. Sharon E. Thompson
Medicaid Integrity Program
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711
(w/o enclosures)